

Criteria	Issues	Discussion
Preservation: 2 Motions 103(a) Subst. Right 103(a)(1) admit (A) Timely, (B) hearsay and CC Std. of Review	The objection must be: 1) made; 2) timely; 3) well-grounded Two levels of objection by D. first opposing prosecution motion in limine to ADMIT then his own to EXCLUDE. Both hearsay and CC. Overruled by the court. Definite 103(b) situation with definitive rulings as to everything except Ronald, but that was not raised on appeal. Why Require Objections?: 1) To avoid endless litigation; 2) To help the court; 3) To help the opposing side (<i>And here ...</i>) Review abuse of discretion factual findings on FRE and de novo as to law and plenary (both) CC. Error: Constitutional. Substantial Right.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
FRE 104(a) mostly <u>Jury Trial</u> <u>Usual bad 104(b)= Ultimate Fact deductions</u>	104(a): <i>Predicate facts</i> on admissibility, especially findings of fact for 803(2) and <i>Crawford</i> Doctrine for the judge (subject to Std of Review above) by a preponderance using <i>Bourjaily</i> . Is it admissible hearsay and testimonial or not? Partial bootstrapping ok, and lots of independent corroborating evidence available to establish elements of 803(2) and reliability of TOMA use as will be discussed in 803(2) section. 104(a)[2] not bound.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
Logical Relevance FRE 401/402 Who, how (weapon), intent most critical What/How independent	401(a) relevance (hypo: ID Shooter, intent); 401(b) materiality (“of consequence”) (attack detail, intent, ID of D, car and weapon. USE INSTRUCTIONS!). TOMA: 402[b] irrelevant not admissible; 402[a] relevant potentially (presumed is ok) admissible Relevance standard of the rules most liberal of possible four	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
Specific Rule(s) Hearsay: 801(a),(b),(c) Do NOT mention 801(d) (lots of deductions for this!!)	801(a)[1] Oral assertions are statements; 801(b) by declarant Kate to Off. Bartolomei (what HE said?) 801(c)[start] these “statements”; 801(c)(1) not made while testifying at the current trial, on the side of the highway at time of incident; 801(c)(2) prosecution intends to offer Kate’s words for TOMA. Former boyfriend, in his Toyota, stalked and fired upon her and Ronald while pursuing them on the highway.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
FRE 802 Presumptive Inadmissibility Exclude and Distrust factors related to <i>declarant</i>	3 Reasons Why Exclude Hearsay? (1) The absence of cross-examination; (2) The absence of demeanor evidence; (3) The absence of the oath 4 Reasons Why do we distrust Hearsay? Four Risks: (1) Risk of Faulty Memory; (2) Risk of Misperception; (3) Risk of "Ambiguity" or "Faulty Narration"; (4) Risk of Distortion as to Kate NOT officer Bartolomei. Kate paints a detailed picture of how the crime developed and occurred; who, the car the weapon the ammunition and intent.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
FRE 803(2) 3 elements Corroboration of elements Corroboration of TOMA reliability.	803(2) (Rule elements, especially “related to” and then <i>Haggins, Arnold</i>). NOT description made while observing it, note the 10-minute gap. YES on 803(2) the three factors from US v. Arnold: (1) excitement causing event; (2) no time to contrive; (3) under effect of excitement; Independent corroboration by officer’s observations and recording that even if not admitted. Note that officer was prepared to talk about her “demeanor”. Defendant and his car found. Gun too. Ronald was shot! Cellphone data supports incident occurred and ARMED DEFENDANT WAS FLEEING and mobile and dangerous during the interview of Kate.	Good (A- to A): 45-60 Satisfactory (B- to B+): 30-44 Unsatisfactory (C- to C+): 15-29 Poor (E to D+): 0-14 MAX: 60
Confrontation Clause, cited, meaning given, applicable to States, <i>Pointer</i>.	Sixth Amendment; Confrontation Clause; (quote it); Explain what it means (<i>Coy</i> used effectively by best answers); Made applicable to states; by 14 th Am.; Due Process Clause; <i>Pointer v. Texas</i> ; quote from <i>Pointer</i> .	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
Constitutional: <i>Crawford</i> Doctrine <i>Officer questioning</i> Primary Purpose Emergency Absent ≠ Unavailable	Crawford: <i>Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine. No showing of unavailable (BARBER) but no cross here, so not admissible IF testimonial.</i> Davis: Testimonial occupies entire field; emergency doctrine; More like <i>Davis</i> than <i>Hammon</i> questioning by the side of the road; officer asked questions about active, fleeing shooter. Bryant: Objective totality of the circumstances test for primary purpose of declarant’s statement to respond to ongoing emergency: armed attacker fleeing in a car. <i>People v. Chism</i> factors.	Good (A- to A): 70-90 Satisfactory (B- to B+): 45-69 Unsatisfactory (C- to C+): 22-44 Poor (E to D+): 0-21 MAX: 90
Balancing? 403	MUST REACH to admit. LAST. Unfair Prejudice: The hearsay statements of a never-cross-examined absent declarant are critical prosecution evidence. “Would shoot at law enforcement”? Reliability due to independent corroboration makes it NOT unfairly prejudicial.	Good (A- to A): 23-30 Satisfactory (B- to B+): 15-22 Unsatisfactory (C- to C+): 08-14 Poor (E to D+): 0-07 MAX: 30
	Evidence, Fall 2019, Professor Pedro A. Malavet	360 total points